

ESCROW AGREEMENT FOR OFF-SITE FACILITIES

THIS AGREEMENT made this _____ day of _____, 19____, by and between _____, hereinafter called the Depositor, and _____, a corporation having its principal office in _____, hereinafter called the Depository.

WITNESSETH: WHEREAS

_____ has entered into a certain Building Loan Agreement with _____ hereinafter called the Mortgagee, dated the _____ day of _____, 19____, providing for the construction of a certain housing project to be financed by a building loan secured by a _____, hereinafter called the "Mortgage", which Mortgage is to be insured by the Federal Housing Commissioner (who together with his authorized agent is hereinafter called the "Commissioner") under the provisions of the National Housing Act, as Amended; and

WHEREAS it is necessary, in connection with the construction of said project, to provide certain facilities lying outside of the property lines of the project as described in the drawings and specifications attached hereto and made a part hereof and as identified in Schedule "A" attached hereto and which are hereinafter referred to as "off-site construction;" and

WHEREAS the Mortgagee is unwilling to make advances of mortgage money for the construction of the project and the Commissioner is unwilling to insure advances of mortgage money under the terms of the National Housing Act without satisfactory assurance that the aforesaid off-site construction will be installed and completed and will be guaranteed against faulty workmanship and/or materials for the period of one year from the date of acceptance by the Commissioner; and

WHEREAS the Depositor is * _____ and as such is primarily interested in the successful completion and operation of the project aforesaid and the completion of said off-site construction; **

NOW THEREFORE THIS AGREEMENT WITNESSETH: That for and in consideration of the premises hereinabove set forth and for the purpose of inducing the Commissioner to insure the proceeds of the mortgage aforesaid, as the same is advanced for the construction of the project, and in consideration of the sum of _____ Dollars (\$ _____) paid by the Depositor to the Depository, the parties hereto agree as follows:

The Depositor hereby deposits with the Depository, who hereby acknowledges the receipt thereof, the sum of _____ Dollars (\$ _____) which sum shall be held by said Depository and disbursed as follows:

(1) To the Depositor upon application made by him to the Depository on FHA Form 2464, Request for Approval of Advance of Escrow Funds, in quadruplicate, on or about the first day of each month after the commencement of work on off-site installations. The sum to which the Depositor shall be entitled upon any such release of escrow funds shall be the cost of the portions of the work acceptably completed, as approved by the Federal Housing Commissioner, computed in accordance with Schedule "A" less 10% and less prior releases of escrow funds. Thirty days after the completion of all work required by Schedule "A" to the satisfaction of the Federal Housing Commissioner, the Depository shall release to the Depositor any balance in the escrow fund herein established.

(2) If instead of performing the off-site work, (or any part thereof) Depositor shall cause or permit the same or any part thereof to be performed by or for the account of the municipality or political sub-division in which the mortgaged property lies, then such proportionate part of the escrow fund as is represented by the estimated cost of such part of the off-site work as is to be performed by or for the account of the municipality, shall be held by the Depository and applied in payment of any special assessment which may be levied against the real property included in the insured mortgage by reason of such improvement, and if not so levied or assessed, or to be so levied and assessed, may be released to the Depositor upon completion of the work, with the written consent of the Commissioner, unless required to meet the cost of the remainder of the off-site work.

(3) In the event the Depositor fails to complete the said off-site construction on or before _____ 196____, in accordance with drawings and specifications or Schedule "A", or fails to produce to the Depository the written approval of said work by the Commissioner; or in the event there be a default in the mortgage insured by the Commissioner resulting in the assignment of said mortgage to the Commissioner or acquisition of the property by the Commissioner, the Depository shall proceed as provided in either paragraph (a) or paragraph (b) or paragraph (c) below:

(a) Upon receiving written instructions from the Commissioner to such effect, the Depository shall proceed to complete the said work in accordance with the drawings and specifications and pay the cost thereof, including all costs and charges of the Depository from the said sum deposited with it, and for this purpose the said Depositor hereby irrevocably authorizes and empowers the Depository to do and perform for it, the said Depositor and in its name, place and stead, all matters and things which the said Depository shall in its judgment deem necessary and proper to be done to effectuate the completion of said off-site construction, in accordance with the drawings and specifications, and to apply the said moneys to the payment of debts contracted or incurred for work done or for materials furnished therefor, or either, in and about said off-site construction and for all expenses, costs and charges in connection therewith, and for the Depository so doing, this warrant of attorney shall be its full and sufficient authority and the orders so given and signed by the said Depository as attorney-in-fact shall be good and sufficient voucher for all payments made by virtue thereof. Further, in such event, the Depositor hereby irrevocably authorizes and empowers the Depository to enter into and upon the said premises and take

* NOTE: State here the relationship of Depositor to the project as "Principal Stockholder(s)" or "Owner".

** The off-site construction contractor should be the depositor and executing party in cooperative management type projects.

**Whereas the Depositor recognizes that the funds deposited with the Depository pursuant to the terms of this Agreement were obtained from the corporate mortgagor corporation.

charge thereof, together with all materials and appliances thereunto belonging, and thereupon in the name of the said Depositor, as his attorney-in-fact, to call upon and require the several contractors for the work to be done and for the materials to be furnished in and about the completion of the off-site construction, to proceed to complete the said work according to the drawings and specifications or any changes, alterations, additions or modifications of the said specifications as may be deemed expedient or necessary by the Commissioner and to do whatsoever in the Depository's judgment it shall deem necessary to be done to secure the completion of the said off-site construction according to the drawings and specifications and in accordance with the instructions of the Commissioner. In the event the work is completed by Depository in accordance with the provisions hereof and written approval of said work is given by the Commissioner, any unexpended balance of the said sum so deposited shall thereupon be returned by the Depository to the Depositor, without interest. The Depository shall in no event be responsible for the completion of the said work beyond the expenditure of the sum deposited and if said sum is insufficient for such purpose, the Depository shall be under no duty to proceed further with the work or to demand or obtain additional sums from the Depositor.

(b) Upon receiving written instructions from the Commissioner so to do, the Depository shall pay to the Mortgagee, to be applied to the reduction of the mortgage debt to the next due installments of principal of the mortgage debt, all of the unexpended balance of the sum on deposit with the Depository. If said balance shall be more than sufficient to pay off the mortgage indebtedness outstanding, including all costs and obligations to the Mortgagee, any balance remaining shall be returned to the Depositor, without interest.

(c) In case there should be a default under the insured mortgage and the mortgagee shall assign the mortgage to the Federal Housing Commissioner pursuant to the contract of mortgage insurance then the Depository shall turn over the deposit or any remaining balance thereof to the Federal Housing Commissioner who shall thereupon act as Depository and shall have all the powers of the Depository set forth herein and in addition shall have the power to apply the remaining funds deposited hereunder to any sum due under the mortgage.

* (4) Depositor for the considerations aforesaid hereby, (and if there is more than one Depositor, jointly and severally) unconditionally undertake(s) and agree(s) and guarantee(s) on written notice and demand of the Mortgagee or of the Commissioner, at the sole expense of the Depositor and without recourse against the Mortgagor, the Mortgagee or the Commissioner to remedy or cause to be remedied any faulty materials and/or workmanship in the off-site work included in this agreement and any damage whatsoever caused thereby, which shall develop or appear within one year from the date of acceptance of same by the Commissioner. This guarantee shall be a continuing guarantee extending for a period of two years from the date of such acceptance by the Commissioner.

* If the Depositor shall fail or refuse to commence in good faith to remedy any such defect, fault or condition within 60 days after written demand, mailed to Depositor at _____, then Depositor shall pay to the Mortgagee or Commissioner (as the case may be) on demand twice the cost of the remedial work as estimated by the Commissioner or the Mortgagee, any overplus after paying the cost of such work to be repaid to Depositor.

It is the intention of the parties to this agreement that the Depository shall act solely at all times on instructions from the Commissioner with respect to the said sum deposited with it by the Depositor and for so acting the Depositor hereby expressly releases and relieves the said Depository of any and all liability or claims of any nature. The Depositor agrees to pay all costs or expenses incurred by said Depository (including court costs and reasonable attorneys' fees) by reason of acting as Depository of the said fund.

IT IS UNDERSTOOD AND AGREED that whenever used herein the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

This agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto and upon the legal representatives of the Depositor. The word "Mortgage" shall be deemed to include a deed of trust and the word "Mortgagee" shall be deemed to include any holder of the mortgage and beneficiary of a deed of trust and their respective successors and assigns. The word "Commissioner" or the words "Federal Housing Commissioner" shall be deemed to include his successor or successors.

IN WITNESS WHEREOF the parties hereto have hereunto caused these presents to be executed on their behalf and their seals affixed the day and year first above written.

ATTEST:

Secretary

By _____
President

Depositor

Depository

* If owner has first contract for off-site construction and contractor has supplied satisfactory Bond (Form 2479), these two paragraphs may be deleted.